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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/763,646	07/09/2001	Klaus Urich	VI/98-023.DE	7684

7590
Gregory L Bradley
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One Medrad Drive
Indianola, PA 15051

11/21/2003

EXAMINER

WILLIAMS, CATHERINE SERKE

ART UNIT	PAPER NUMBER
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3763

DATE MAILED: 11/21/2003

18

Please find below and/or attached an Office communication concerning this application or proceeding.

AK

Office Action Summary

Application No.

09/763,646

Applicant(s)

URICH, KLAUS

Examiner

Catherine S. Williams

Art Unit

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) See Continuation Sheet is/are allowed.
- 6) ☒ Claim(s) 1,4-7, 14, 15, 34, 37, 45 and 47 is/are rejected.
- 7) ☒ Claim(s) 13, 16, 46, 48 and 112 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

Continuation of Disposition of Claims: Claims pending in the application are 1,4-7,13-25,27-34,37,45-55,59,60,62-70,72-84,86-99,101-107,109-137,139,140,142 and 143.

Continuation of Disposition of Claims: Claims allowed are 17-25,27-33,49-55,59,60,62-70,72-84,86-99,101-107,109-111,113-137,139,140,142 and 143.

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DETAILED ACTION

The petition, dated 9/11/2003, to the refusal to enter amendment has been entered into the file and accepted. In light of the merits of the petition, the after final amendment dated 7/7/03 has been entered. An action on the merits in light of the after final amendment appears below.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4-7, 34, 37 are rejected under 35 U.S.C. 102(b) as being anticipated by Haber et al (US Pat# 5,246,670). Haber discloses a syringe with an agitation element. See figures 1 and 2. The agitation element has a casing or cover and an inner area. The casing is a solid (different and greater density than the fluid in the syringe) and the inner area is filled by a gas.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 14-15, 45 and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haber et al in view of Rosenwald (US pat# 3,789,670). Haber meets the claim limitations as described above but fails to disclose a recess in the plunger of the syringe.

However, Rosenwald discloses a cell for containing a fluid that also has a plunger. The plunger includes a recess (13b) in the distal end for accommodating an agitation element (14). See figure 2.

At the time of the invention, it would have been obvious to incorporate the recess of Rosenwald into the invention of Haber. Both devices are within the art of fluid collection/dispensing and both contain plunger elements and agitation devices. Therefore, the inventions are analogous and a combination is proper. Additionally the motivation for incorporation would be to ensure a complete emptying of the syringe of Haber during use thereby enhancing the usability of the device. See Rosenwald 3:19-20.

Allowable Subject Matter

Claims 17-25, 27-31, 113-119, 139, 32-33, 140, 49-55, 59-60, 62-70, 72-84, 86-99, 101-107, 109-111, 120-137, 139, 140 and 142-143 are allowed.

Claims 13, 16, 46, 48 and 112 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Catherine S. Williams whose telephone number is 703-308-4846.

The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 703-308-3552. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-2192.

Catherine Serke Williams *CSW*
November 6, 2003


BRIAN L. CASLER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700